THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.Nos.10639 and 10657 of 1999

COMMON ORDER:

In both these writ petitions, common questions of fact and law arise for consideration, therefore they are being disposed of by this common order.

It appears, first respondent in both the writ petitions have filed application under Section 15(2) and 16 of Payment of Wages Act before the second respondent-Authority seeking certain amounts. It was their case that they were paid less wages than what they were eligible for the period from June to September, 1992. A detailed counter affidavit was filed by petitioner-management denying the allegations and asserting that during the period from June to September 1992, the APSEB authorities have imposed sudden power cut of 30%, as a result of which, petitioner-management having left with no other alternative, had resorted to lay off. Further, due to acute paucity of funds, and in view of huge losses year after year, Petitioner Company was declared as sick units. There was no budgetary support specifically in the form of 'cash loss reimbursement' by the Central Government. In order to avoid such uneconomical situations beyond the control of management, management held bilateral discussions with the recognized unions about the future working of mills. In the said discussions, both the parties came to an amicable understanding to run the mills with reduced activities by laying off the workers on rolls, on rotation basis. The National Textile Corporation, which is a holding Company, has identified the unviable mills and classified into four categories i.e. Category-A, Category-B, Category-C and Category-D. Petitioner-Mill is included in 'D' category. Further,

the National Textile Corporation Ltd., has been referred to BIFR and financial institutions did not came forward to render any assistance. This is an undisputable fact known to all major unions functioning in the mills. The said unions have admitted the same after lengthy discussions. Under those peculiar circumstances, the management has resorted 'lay-off' on rotation basis. The wages for the period from June to September were paid for the actual working days plus half wages for the lay-off period. Hence, the question of payment of less wages does not arise. The provisions of Payment of Wages Act do not attract. Further, as defined under Section 25-M(1) of the Industrial Disputes Act, 1947, lay-off period, on account of shortage of power is exempted from the purview of the Act. Before the Authority, applicant-P.W.1 was examined, but no documentary evidence has been marked. On behalf of management, neither any documentary nor oral evidence was let in. After a detailed consideration of the entire material placed before it, the second respondent-Authority has passed the following order:

> "It is clear that the deducted wages being made by the management for the period from June 1992 to September 1992 due to power cut, but the Azam Jahi Mills have more than 100 workers, attracts the Chapter-V of Industrial Disputes Act, 1947 which requires permission to lay-off all workmen as required under Section 25-M of I.D. Act since there is prohibition of lay-off under Section 25-M and declared the lay-off non-payment of wages during the lay-off period is contradictory to the provisions of I.D. Act and also under Payment of Wages Act. Therefore, the claim is allowed and directed the opposite party to pay the wages within (30) days from the date of receipt of this order".

Aggrieved by the same, the present writ petition is filed.

The learned counsel for petitioner-management strenuously

contended that firstly the application under Section 15(2) of Payment of Wages Act is not maintainable and secondly, whether the lay-off was valid under Section 25-M of I.D. Act or not cannot be decided by the Authority under Payment of Wages Act. On these two grounds, and for the reason that the respondents (applicants) have already received 50% of the wages, the very application itself is not maintainable and the impugned orders are liable to be set aside.

Per contra, the learned counsel appearing for first respondent Mr.G.Ravi Mohan submitted that when there is a lay-off due to shortage of power also, the management is supposed to get prior approval. Therefore the second respondent-Authority has rightly held that the lay-off was illegal and non-payment of wages during the said period is contrary to the provisions of I.D. Act and Payment of Wages Act, therefore, the order of the second respondent-authority calls no interference by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned orders and other material made available on record.

From the averments noticed above, it cannot be said that there is any lay-off. It appears, in view of the understanding between management and workers, due to shortage of power, workers were being engaged on rotation basis. Therefore, it does not fit into the teeth of lay-off at all. Even assuming that this is a lay-off, it cannot be said that it is illegal, because the very Section 25-M(1) in this regard is clear, which reads as under:

> "Prohibition of lay-off: No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except (with the prior permission of the appropriate Government or such authority as may be specified by that Government by

> notification in the official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion."

Further, the contention of petitioner-management that due to shortage of power, there was rotational lay-off of the workers is not in dispute. Under those circumstances, the second respondent-Authority could not have ventured into the area of authority under the Industrial Disputes Act for the purpose of declaring lay-off as valid or not. The words used under Section 15 of Payment of Wages Act 'as to incidental thereto' does not mean that the authority under Payment of Wages Act could have ventured to decide as to validity or otherwise of lay-off. Even otherwise, as noticed above, petitioner-management has taken a clear stand that the APSEB has imposed 20% power cut and in view of the same, rotational lay-off was taken up. Further, the payment of 50% lay-off compensation by the management is also not in dispute. Under those circumstances, I am of the opinion that the very application under Section 15(2) of Payment of Wages Act is not maintainable and entertaining such an application by the second respondent is arbitrary and illegal. Therefore, the impugned orders are liable to be set aside.

In the result, the writ petitions are allowed and the impugned orders are set aside. However, the amounts already paid in view of interim order passed by this Court shall not be recovered. If there are any amounts still lying to the deposit of second respondent as of now, the respondent employees are entitled to withdraw the same without furnishing any security. No order as to costs.

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C.V.RAMULU,
J

Date: 19.12.2007
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THE HON'BLE SRI JUSTICE C.V.RAMULU

19.12.2007

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.Nos.10639 and 10657 of 1999

Date: 19th December, 2007

W.P.No.10639 of 1999

Between:

The General Manager,
Azam Jahi Mills, Warangal (P),
Warangal district. .. Petitioner

And

Prakasam and others. .. Respondents

W.P.No.10657 of 1999

Between:

The General Manager,
Azam Jahi Mills, Warangal (P),
Warangal district. .. Petitioner

And

Md.Ankus & others.

.. Respondents